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SIPDIS

SENSITIVE

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TAGS: PHUM PREL DR OAS

SUBJECT: DOMINICANS ANGERED BY VERDICT AT INTER-AMERICAN COURT OF HUMAN RIGHTS

1. (U) On October 8 the Inter-American Court of Human Rights published its 91-page decision ordering the Dominican government to pay USD 26,000 in compensation to families of two Dominican children of Haitian ancestry to whom officials refused to issue birth certificates. The mother of each child had been born in the Dominican Republic. The case was brought to the Inter-American Human Rights Commission in 1998 by a non-governmental organization representing Dominico-Haitian Women. The group received legal assistance from the International Human Rights Legal Clinic of the University of California, Berkeley.

2. (U) At issue were the refusal of the government to register the births, the lack of a procedure to accept delayed declarations of birth, the lack of recourse to the judicial system, and the establishment of procedures for the registration, even if belated, of births of Dominican children of Haitian ancestry. After lengthy attempts by the Commission to promote an amicable solution, on September 25, 2001 the government issued birth certificates to the children (one then aged 16, the other aged 4) but dealt with none of the other concerns. The Commission recommended various government actions and found that the government had infringed 8 articles of the Inter-American Convention on Human Rights concerning the rights of the child, the rights to nationality, to equality before the law, to registry of identity by the authorities, to a name, and the obligation of the state to respect citizens, right.

3. (U) When the government declined to accept most of the recommendations and refused to acknowledge infringements, on July 11, 2003 the Commission submitted the matter to the Court.

4. (U) The Court accepted evidence and held hearings over a period of two years. In the last stages of the evidentiary process the Dominican government argued that the case should not fall within jurisdiction of the court because the plaintiffs had not exhausted all recourse in the Dominican Republic, the government's issuance of birth certificates constituted an amicable solution, and the events pre-dated Dominican acceptance on March 25, 1999 of the authority of the Court.

5. (U) The Court rejected all three Dominican arguments and found decisively in favor of the plaintiffs. A sample of its tone, in paragraph 166 of the decision:

&The Court considers that in requiring the girls to comply with requirements different from those generally required of minors of 13 years of age seeking Dominican nationality, the government acted in arbitrary fashion, without reasonable or objective criteria, and in a manner contrary to the best interests of the child, thereby engaging in discrimination prejudicing the children Dilia Yean and Violeta Bosico. This situation caused them to be situated on the margins of the legal structure of the state and to remain in a condition of statelessness, which placed them in a situation of extreme vulnerability concerning the exercise and enjoyment of their rights.8

6. (U) The Court upheld the view of the Commission that the Dominican government had failed to respect the 8 articles in the Convention. It ordered the government to publish in the Dominican official gazette and in a nationally circulated newspaper within 6 months the court's summary of its findings, as well as an apology to the two children. It stated that the government should make changes in the law within a reasonable period so as to facilitate birth registrations, including via belated declarations. In addition to the compensation adjudged to the plaintiffs, the Court directed the government to pay USD 6,000 to the plaintiffs, representatives for compensation of costs of supporting organizations.

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Reactions
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7. (U) In comments to the press on October 8 Vice President Rafael Alburquerque said that the Dominican government is not

xenophobic towards Haitians; the Haitian problem must be resolved by the international community and not by the Dominican Republic.

18. (SBU) Dominican editorialists have been bristling over the last ten days about an international campaign to discredit the Dominican Republic carried out by Haiti and interests in developed countries, probably in anticipation of the Court's verdict. Prominent politician Representative Pelegrin Castillo, regularly the voice for alarmists on Haiti, asserted that the Court's decision is part of a plan on behalf of the Haitian government along with the superpowers to resolve Haiti's problems on the territory of the Dominican Republic. . . every time the Dominican Republic makes progress with its migration policy, there is a sudden international campaign to discredit and damage national interests.

19. (U) Foreign Minister Morales Troncoso initially declined comment, promising a reply on Monday, October 10. He released a statement on October 11 characterizing the verdict as categorically unacceptable. He said that the Dominican government had done nothing illegal and should not be obliged to pay compensation; he emphasized that the government does not promote discrimination. The Court's reasoning was not based on the facts of the case and showed a lack of knowledge of both Haitian and Dominican constitutional law. The evidence provided by the government's representatives were ignored, as if the verdict had been conceived of in advance as a condemnation of our country.

10. (U) Morales Troncoso repeated the government's arguments that it had acted in good faith and that the case was without foundation because the government had issued birth certificates to the petitioners in 2001. There was never any obstacle to their right to education; they did not lose a single year of school and at no moment were they stateless, a contention that our representatives demonstrated to the court.

Comment

11. (SBU) The Foreign Minister's emphatic reply is consonant with the general line in Dominican political circles and most of the press -- that the Dominican Republic is the victim here, not the Haitian-Dominican children. This defensive anger is widespread in Dominican society. Morales Troncoso rejected the Court's verdict but he did not deal with the institutional or international implications of his reply. The country bound itself in 1999 to accept the jurisdiction of the Court, and there is no further appeal to the devastating judgment. A cooling-off period may be necessary; it appears unlikely, however, that this government will comply with the instructions of the court to publish the verdict, apologize, and compensate those who were prejudiced. If the government holds out, that attitude will leave it in a doubtful position vis--vis its international obligations and could bring into question the effectiveness of the Court.
HERTELL